

**FLATHEAD COUNTY PLANNING AND ZONING  
STAFF REPORT #FPAE-10-03  
AGENCY EXEMPTION TO LOCAL ZONING  
MONTANA FISH, WILDLIFE & PARKS – STREET FISHING POND  
OCTOBER 26, 2010**

A notice to the Flathead County Board of Adjustment from the Montana Fish, Wildlife and Parks Region One Office indicating they intend to acquire and manage a 12.789 acre parcel of land containing the Pine Grove Family Fishing Pond, contrary to the AG-80 Agricultural zoning in place. A public forum for comment on the proposed use has been scheduled before the Flathead County Board of Adjustment on Tuesday, November 9, 2010 beginning at 6:00 PM, in the 2<sup>nd</sup> Floor Conference Room of the Earl Bennett Building, 1035 First Avenue West, Kalispell, Montana. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the 2<sup>nd</sup> floor of the Earl Bennett Building at 1035 First Avenue West in Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed master plan map amendment is not within the jurisdiction of any local land use advisory committee or local land use council.

**B. Board of Adjustment**

The Flathead County Board of Adjustment (BOA) will hold a public hearing on the agency exemption November 9, 2010, beginning at 6:00 PM in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building located at 1035 First Avenue West in Kalispell. This space is reserved for a summary of the Board's discussion.

**II. GENERAL INFORMATION**

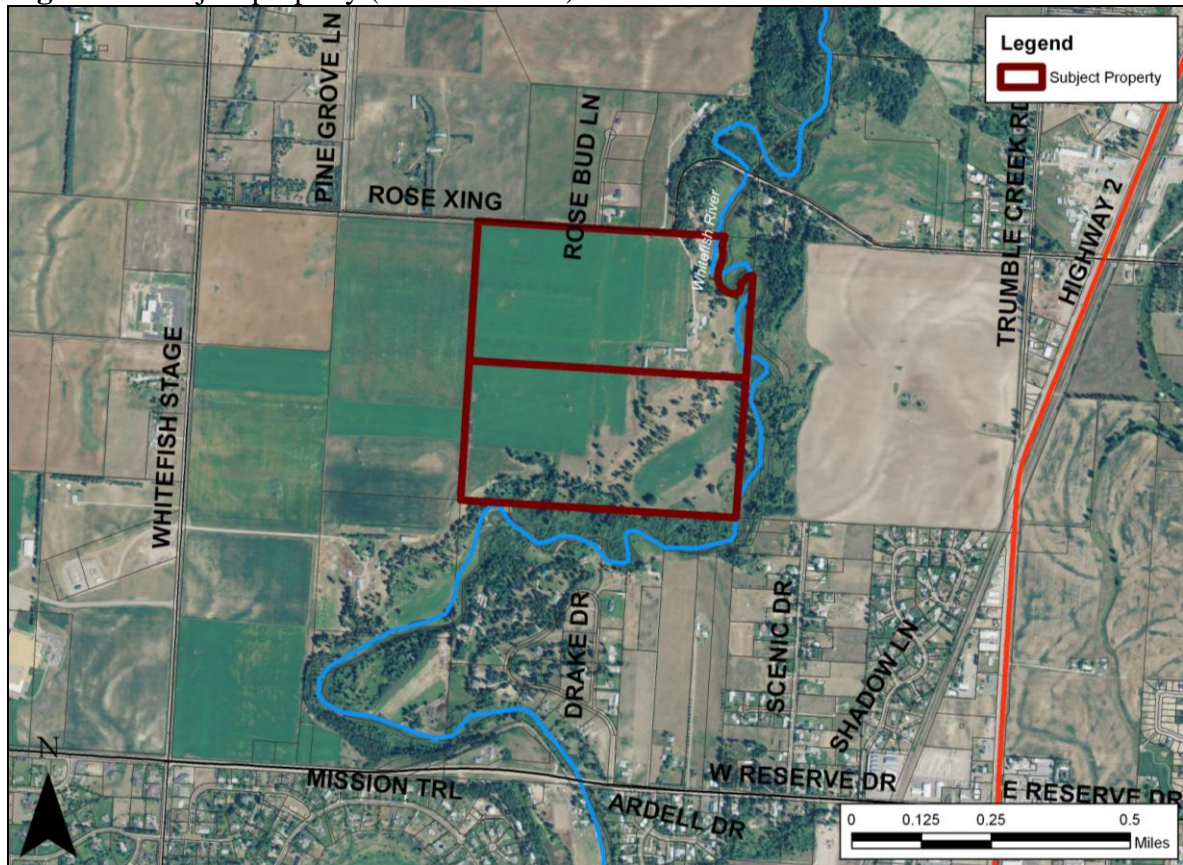
**A. Application Personnel**

- i. **Property Owner:** Robin & Joyce Street  
1414 Rose Crossing  
Kalispell, MT 59901
- ii. **Applicant:** Montana Fish, Wildlife and Parks  
490 N. Meridian Road  
Kalispell, MT 59901-3854
- iii. **Technical Assistance:** Erica Wirtala, AICP  
Sands Surveying, Inc.  
2 Village Loop  
Kalispell, MT 59901

## B. Property Location and Size

The agency exemption would apply to the subject property located at 1414 Rose Crossing, between Whitefish Stage and Highway 2 East along the Whitefish River (see Figure 1 below). The property can be legally described as Tract 1 in the S½ NE ¼ and Tract 5 in the N½ NE ¼ SW'ly of the river in Section 29, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana. A 12.789 acre parcel would be created through the completion of a boundary line adjustment (BLA) following review of the agency exemption. The 12.789 acre parcel described would be located in the southeast corner of the subject property (refer to preliminary BLA dated 8/6/10 and submitted with the exemption request).

**Figure 1:** Subject property (outlined in red).



## C. Summary of Notice:

Montana Fish, Wildlife and Parks has given notice to the Flathead County Board of Adjustment they intend to acquire a 12.789 acre parcel of land containing the Pine Grove Family Fishing Pond and manage the facility for public recreational use. The 12.789 acre parcel would not comply with the minimum lot size requirements of the AG-80 Agricultural zoning in place; therefore Montana Fish, Wildlife and Parks requests an agency exemption, pursuant to Section 76-2-402 MCA, to utilize the property contrary to the local zoning regulations. The following text pertains to the agency exemption process, is taken directly from the Montana Code Annotated and is applicable to the request:

**76-2-402. Local zoning regulations - application to agencies.** *Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.*

- *(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.*
- *(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.*

While the property is currently under private ownership, Montana FWP has submitted documentation verifying there is an agreement in place to acquire the property described for public use, following review of the exemption request and the filing of a boundary line adjustment creating the 12.789 acre parcel. Said documentation establishes the agency's stated (not speculative) intent to obtain private property for public use, with Montana FWP – not the private property owner – acting as the applicant for agency exemption. Documentation includes a draft environmental assessment, fishing access request and acquisition evaluation, preliminary approval for acquisition from the Fish, Wildlife and Parks Commission, survey of proposed parcel to acquire and a letter from the property owner indicating intent to convey property to the agency.

**D. Adjacent Property Notification:**

Legal notice of the public hearing before the Flathead County Board of Adjustment was published in the October 24, 2010 edition of the Daily Interlake. Property owners within one hundred and fifty (150) feet of the subject property were notified by mail on October 14, 2010.

**E. Public Comments**

No written comments have been received regarding the agency exemption. It is anticipated those members of the public wishing to provide comment on the proposal will do so during the public hearing before the Board of Adjustment on November 9, 2010.